

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ILLINOIS NATIONAL INSURANCE COMPANY,
THE INSURANCE COMPANY OF THE STATE OF
PENNSYLVANIA, and NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA,

Plaintiffs,

v.

TUTOR PERINI CORPORATION,

Defendant,

v.

CERTAIN UNDERWRITERS AT LLOYD’S, LONDON,

Third-Party
Defendant.

CASE NO. 11-CV-00431 (KBF)

**CHARTIS INSURERS’
MOTION FOR SUMMARY JUDGMENT**

The Chartis Insurers¹ submit this Motion for Summary Judgment. Tutor Perini Corporation (“Tutor”) cannot convert commercial general liability policies into a surety for Tutor’s own defective work. New York law is clear that a contractor’s faulty work is not covered by CGL policies. Tutor also violated the policies’ voluntary payment provisions by agreeing to repair its project without telling the Chartis Insurers. M.G.L. Chapter 93A cannot apply because the allegedly wrongful acts of the Chartis Insurers did not take place primarily and substantially in Massachusetts, because there was never coverage in the first place, and because Tutor was not damaged.

¹ Illinois National Insurance Company (“Illinois National”), The Insurance Company of the State of Pennsylvania (“ICSOP”), and National Union Fire Insurance Company of Pittsburgh, Pa (“National Union”).

In support of this Motion, the Chartis Insurers rely on their accompanying Statement of Undisputed Facts and Memorandum of Law. In addition, the Chartis Insurers incorporate herein the Statement of Undisputed Facts and Memorandum of Law of Certain Underwriters at Lloyd's London. Finally, because one of Tutor's Rule 30(b)(6) witnesses is not available until July 30, 2012, Tutor has assented to Chartis submitting additional statements of fact from that deposition.

WHEREFORE, the Chartis Insurers respectfully request that judgment enter on all of the Chartis Insurers' claims, and that all of Tutor Perini's counterclaims be dismissed, and that the Court grant such other relief as is just and proper.

Respectfully submitted,

ILLINOIS NATIONAL INSURANCE COMPANY, THE
INSURANCE COMPANY OF THE STATE OF
PENNSYLVANIA, and NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA,

By its attorney,

Dated: July 28, 2012

/s/ Joshua W. Gardner
Joshua W. Gardner
EDWARDS WILDMAN PALMER LLP
111 Huntington Ave.
Boston, MA 02199
Tel. 617.239.0100
Fax. 617.227.4420